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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 15 (PKC)

5 VIRGIL GRIFFITH,

6 Defendant.

7 -----x
8 New York, N.Y.
9 July 24, 2020
1:30 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS
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17 Southern District of New York
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24
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(Case called; telephone conference)

THE COURT: This is United States of America v. Virgil Griffith, 20 CR 15.

Appearing for the government?

MR. KROUSE: Yes, your Honor. Good afternoon. This is Michael Krouse for the United States. With me on the line are Kyle Wirshba and Kimberly Ravener.

THE COURT: Good afternoon to you all.

For the defendant.

MR. KLEIN: Good afternoon. This is Brian Klein. Along with me is Keri Axel and Sean Buckley and my client Virgil Griffith is also on the line and is appearing by telephone from Alabama.

THE COURT: Mr. Klein, am I correct that your client waives his physical appearance and agrees to proceed telephonically?

MR. KLEIN: Yes, your Honor.

THE COURT: Mr. Klein, this is your application. I have obviously read your letter, your submission, the government's and position and I am ready to proceed.

MR. KLEIN: Thank you, your Honor. This morning we're going to keep things interesting for you and Ms. Axel is going to argue for Mr. Griffith.

THE COURT: Wonderful.

MS. AXEL: Good afternoon, your Honor. It is good

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1 morning here in Los Angeles, your Honor.

2 THE COURT: Good morning then to you.

3 MS. AXEL: Thank you, your Honor.

4 Your Honor, yes, I am sure you now have had an
5 opportunity to look at the application we submitted and Judge
6 Broderick's order and as the Court now knows, Mr. Griffith has
7 a stringent package of pretrial release conditions that were
8 set by Judge Broderick in January. We have moved for an
9 amendment of two of the conditions. One is a removal of
10 electronic monitoring and as mentioned in the application of
11 course Mr. Griffith would like to have the electronic
12 monitoring equipment removed and be moved to a curfew system
13 instead. We're bringing that request at the instigation of
14 Carl Wallace. The supervising Pretrial Release officer in
15 Alabama requested that we make that part of our request. From
16 Mr. Griffith's perspective, he would love to have that
17 restriction lifted.

18 The internet restriction is the one that he would
19 really like the Court to focus on. And he really can't do
20 anything I think, your Honor, productive. I think most judges,
21 courts, Pretrial Services officers would love for defendants to
22 be in a situation such as getting a job and he can't do that
23 with the internet restriction that he currently has that allows
24 him to communicate only with counsel. He simply cannot do
25 things like take a class online or participate in Zoom meetings

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1 or communicate by email with friends. Many of the things,
2 which I think we all even now more in the pandemic situation
3 realize how dependent we are on it.

4 We waited to bring this application, your Honor. We
5 are mindful and sensitive of not wanting to burden the Court
6 with litigation when it wasn't ripe. So we waited to bring
7 this I think until the conditions were ripe. For example, I
8 think it is quite critical that cryptocurrency drives, his cold
9 wallets, as those are referenced, have now been secured. I
10 think a key piece of the government's argument concerning
11 flight was that those were essentially sort of unsecured
12 resources that could not be traced. Again, while we dispute
13 the premise about tracing them, nevertheless those cold wallets
14 are the key to accessing cryptocurrency. We understand the
15 government's concern and we always agreed not to go into the
16 apartment or take any acts to try to take custody of those, but
17 it took some period of time to actually work out a situation
18 where those could be secured by counsel and they now have been.
19 So I think that is a key changed circumstance.

20 I think that the global pandemic, your Honor, we would
21 submit, which the Court yesterday referred to as a national
22 emergency, is also a critical changed circumstance. I am sure
23 the Court has entertained petitions from defendants to get out
24 of jail and I know many of those petitions have been granted.
25 In this instance I think it definitely makes it harder for

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1 anyone to travel. Certainly more difficult for U.S. citizens
2 to travel. I had an international vacation I had to cancel
3 this summer. You simply cannot move around the way you used,
4 but I think it has changed the lens by which we view things. I
5 think things were very transitional at the time that the
6 parties were in front Judge Broderick and Mr. Griffith's life
7 obviously was completely disrupted at the time and we may not
8 have fully appreciated how that restriction would wreck havoc
9 on his ability to do anything to do productive.

10 Specifically, your Honor, the work situation has
11 changed. I think the record in front of Judge Broderick makes
12 it clear that the Court there was interested in his working.
13 Pretrial Services has always recommended that a condition of
14 his release be that he works and Judge Broderick required about
15 work and at the the time we simply didn't know. The conditions
16 of his arrest were laid out in her papers, but he is arrested
17 on Thanksgiving. He is transported in November or December to
18 New York. He doesn't get an appearance until the day after
19 Christmas and his first appearance before Judge Broderick took
20 place in early January. So things were very much in the air
21 and we just did not have information or really had much
22 opportunity to give thought to work and what that might look
23 like.

24 It is clear now that he is going to still be on leave
25 at the Ethereum Foundation, but he has been offered a

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1 consulting contract and we offered to make that available to
2 the Court *in camera* if the Court wishes to see it. I think he
3 would be available to do other types of that kind of work.
4 Given his skill set and I think the where the work world is at
5 your Honor, he has to have the ability to work online, on the
6 internet in order to do that kind of productive work and to use
7 his skills. So I think that situation has also changed since
8 the time of the initial hearing.

9 I would say, your Honor, particularly during this
10 pandemic, the way for him to get a job is to have internet
11 access and have monitored internet access. This is going to
12 get beyond my technical expertise, your Honor, but he does
13 back-end work on people's servers from a computer perspective
14 and it is the type of work that is protected by trade secrets.
15 And Pretrial Services monitoring software, which Mr. Griffith
16 also has to pay for which is on the computer now which takes an
17 image of your screen regularly and transmits, is not secure.
18 We had a conversation yesterday about VPNs, and people
19 obviously go to great steps to protect their data as employers
20 would want their data protected. So I think it is critical for
21 his work to be able to have that kind of internet access.

22 Finally just on the changed circumstance I will say,
23 your Honor, it appeared to us as Judge Broderick recognized
24 that this is a fluid situation and he even provided the parties
25 an opportunity to come back before the final assignment of a

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1 judicial officer, which of course we now have in your Honor.
2 So we think that these are changed circumstances and this is an
3 appropriate time to revisit these conditions so that
4 Mr. Griffith can be as productive as possible while here on
5 release.

6 THE COURT: Thank you, Ms. Axel.

7 Let me hear from the government.

8 MR. KROUSE: Yes, your Honor.

9 Before the Court are two requests that the defense has
10 made. It sounds as though the request to lift home confinement
11 is not one that the defense is pressing. They continue relying
12 on the Pretrial Services officer. So that one the government
13 will just say that the defendant remains a risk of flight for
14 all the reasons laid out in the government's papers and all the
15 reasons that were expressed to Judge Broderick. Judge
16 Broderick found that there were conditions that would
17 reasonably assure the defendant's appearance in court. One of
18 those conditions was the home confinement condition. The
19 defense doesn't express any justification really for why that
20 condition should be lifted at this time. Unless the Court has
21 questions about that, I will move to the internet monitoring
22 condition.

23 THE COURT: Well, Judge Broderick appears to have
24 ordered home detention with electronic and GPS monitoring; is
25 that correct?

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1 MR. KROUSE: Yes, your Honor.

2 THE COURT: Let me just hear defense counsel as to
3 precisely what about that that you seek to have modified if
4 anything.

5 MS. AXEL: Your Honor, we would be happy for
6 Mr. Griffith to have curfew, but it is specifically the
7 electronic and GPS monitoring. I think when you use the words
8 "home detention," I think the difference is that with home
9 detention he has to be specifically approved for even things
10 like going out to take a course or going to the gym.
11 Mr. Griffith has expressed to me like there are times when he
12 is needed to go pick up food for the family or he would like to
13 go pick up food for the family even those sorts of things on
14 home detention have to be approved and he can't always get in
15 contact with Mr. Wallace to get approval to do things that help
16 make him also a productive member of his family unit. I am not
17 sure of the terminology necessarily used in your district, but
18 I think we would ask for simply a curfew without the home
19 detention or electronic monitoring so he could both pick up
20 food, go to the coffee shop, go to the gym without approval,
21 etc.

22 THE COURT: Thank you.

23 Go ahead, Mr. Krouse.

24 MR. KROUSE: Your Honor, from the government's
25 perspective he shouldn't be doing any of those things while on

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1 home detention. He needs specific approval to leave the home
2 for legitimate reasons, which include work, which could include
3 attorney visits and things of that nature. The government's
4 argument before Judge Broderick is that he should be detained
5 as a risk of flight. Judge Broderick determined that there
6 were bail conditions that would reasonably assure the
7 defendant's presence and ordered very strict bail conditions to
8 include home detention with electronic monitoring.

9 I am not hearing anything from the defense about why
10 that condition is no longer required. Judge Broderick found
11 that it was. The government's position is that it is required.
12 And that if anything the strength of the evidence in this case
13 has enormously grown since the time we were before Judge
14 Broderick. So if anything, the defendant's incentive to flee
15 in light of the strength of the government's evidence against
16 him, in light of the substantial term of imprisonment he could
17 face, the government put in its letter what its initial
18 determination of what the sentencing guidelines would be all
19 provide an incentive for the defendant to flee. So if anything
20 what was before Judge Broderick has now grown stronger and the
21 home detention with electronic monitoring in the government's
22 view is both appropriate and necessary to ameliorate any risk
23 of flight that the defendant poses.

24 THE COURT: All right. Now let me ask the government
25 is the restriction on computer use and the requirement of

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1 loading monitoring software limited to risk of flight, or is
2 there some other justification for this condition?

3 MR. KROUSE: Your Honor, it is both in the
4 government's view. So there is a justification for the risk of
5 flight. The defendant is an expert on the dark web. Our
6 understanding is that he developed a browser for the dark web.
7 As your Honor is likely aware, the dark web can be used for a
8 number of elicited purposes, including to secure identity
9 documents and things of that nature which could facilitate the
10 defendant's ability to flee the jurisdiction.

11 The danger to the community is also a factor to
12 consider here. The defendant has a sophisticated knowledge of
13 technology, which the government has laid out in its papers
14 which underlie the charges in this case. He has expressed
15 several times a willingness to use that technological knowledge
16 to assist the regime, namely, North Korea with the development
17 of blockchain and cryptocurrency technologies. We discussed
18 several communications that the defendant had with the
19 co-conspirator regarding the possibility of shipping a rig in
20 order to mine cryptocurrency on behalf of North Korea. He
21 traveled to North Korea to provide a presentation on these
22 technologies. Giving the defendant untethered access to the
23 internet would possibly allow him to reach back out to
24 co-conspirators to further North Korea, to possibly chill the
25 government's investigation, to contact individuals who are

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1 possible witnesses for the government's investigation all of
2 which underscores the necessity to have the monitoring
3 technology in place.

4 It is not the case that Mr. Griffith can't use the
5 internet. That's not what Judge Broderick said. He said that
6 he can't have a Smartphone and that if he uses the computer
7 that has internet access or some internet device, it needs to
8 be monitored except when he is speaking or emailing with his
9 defense counsel. In our view that strikes the appropriate
10 balance. There is no reasons provided by the defense for
11 lifting that condition other than this unclear in the
12 government's view notion that he can't work as a result of that
13 condition. The reality is he may need to find a job that is
14 consistent with the conditions of release that were imposed by
15 Judge Broderick and there is no reason to lift that condition
16 as far as the government can tell.

17 THE COURT: Can you tell me whether Judge Broderick's
18 order was premised upon a finding by the preponderance that
19 these were the conditions that can reasonably assure the
20 defendant's appearance, or whether the restrictions were in
21 part based on a danger to the community to persons other than
22 defendant?

23 MR. KROUSE: Your Honor, I may be wrong and I would
24 want to look more closely, but I don't believe Judge Broderick
25 made a specific finding on that point.

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1 THE COURT: Okay.

2 MR. KROUSE: He gave conditions that he thought were
3 appropriate for the defendant's release. It's possible he had
4 in mind both. I don't think it is entirely clear as the
5 defense makes it that it is purely a risk of the flight that
6 the Court was relying on because I don't think he said that one
7 way or another.

8 MS. AXEL: Your Honor, I will jump in here. The
9 government --

10 THE COURT: I am happy to have you jump in, but I
11 think Mr. Krouse isn't done.

12 Are you done, Mr. Krouse?

13 MR. KROUSE: Yes, I am, your Honor.

14 THE COURT: Okay. You are welcome to reply.

15 MS. AXEL: Yes, your Honor. The government never
16 argued detention. They never argued danger. Not in three
17 hearings did they ever argue danger. I don't know if the Court
18 has access to the Pretrial Services report, but the issues here
19 were never about danger and they didn't argue that.

20 I think the Court focused early on on the first
21 questions to Mr. Krouse about sort of the nexus between what is
22 purpose of a condition and is it addressed to just reasonably
23 assure that the defendant will appear or whether it was
24 addressed to something else like danger. I think it can only
25 have been addressed to assure defendant's reasonable appearance

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1 because that is the only thing that was ever argued. They have
2 never argued that he is a danger. He is not a danger, your
3 Honor.

4 I think the whole pattern of his very much out and
5 public communications about the decision to go to North Korea
6 shows that. In fact, we obviously don't agree with everything
7 in the government's proffer about his case; but I think what
8 the Court can take from that is none of that was high tech.
9 We're not talking about somebody getting on and doing some sort
10 of programming thing. He is not accused of actually using his
11 computer skills for ill. He gave a lecture and they put in the
12 remarks of what the they allege he said in that lecture.
13 That's the sum total of it. They never alleged that he is a
14 danger and he is not a danger.

15 I am happy to speak briefly to the dark web issue,
16 your Honor, which was put in front of Judge Broderick. And I
17 think we were very well able to point out that in fact
18 Mr. Griffith in the context of his knowledge of the dark web
19 has used those skills for good. Your Honor, we handed up to
20 Judge Broderick -- I wasn't there and the Court wasn't there
21 giving the time of it, but I read the transcript and I
22 participated in the preparation for it. We handed up to Judge
23 Broderick the research paper.

24 Mr. Griffith is a Ph.D and had a research interest in
25 the dark web and prepared a paper about access to the dark web.

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1 One of the key findings of that paper, your Honor, is in fact
2 that it is not completely dark because it's used for human
3 rights purposes. A business many times can use it when their
4 countries do not allow them to access Facebook and have free
5 speech that we have here. He wrote a research paper to that
6 and he in fact got kicked out of the tour project, which was a
7 project where they had created this sort of Google device to
8 access the dark web because Mr. Griffin insisted on cooperating
9 with law enforcement and he has cooperated with law enforcement
10 in teaching and talking about the dark web. He provided a
11 lecture to Interpol. In the government's discovery there are
12 correspondence with an FBI agent in Las Vegas, who sent a
13 request for him to pull logs in furtherance of an FBI
14 investigation. Her name is Anne M. Kempf. He did so without
15 subpoena so that the data could be preserved. So he has
16 cooperated with law enforcement. He has never been accused of
17 doing anything wrong. So I think it is very important for the
18 Court to sort of separate out these whiffs or suggestions of
19 dangerous use of the internet from really which poses a risk of
20 flight. There is nothing about his use of the internet that
21 poses a risk of flight. There is just this mere speculation of
22 something untoward on the dark web. I suggest, your Honor,
23 that is mere speculation. There is no evidence to support it.
24 We don't accept it. We have represented defendants who's
25 expatriate or less. It is actually a very complicated process

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1 and it is not so easy. So we reject that suggestion. But it
2 mere speculation and if in fact Mr. Griffith wanted to use the
3 dark web for such purpose, he likely would not do so on his
4 home computer, your Honor.

5 THE COURT: Why is that?

6 MS. AXEL: Well, I think if you were the Dr. Evil,
7 your Honor, that they made him out to be, he wouldn't sit at
8 his home computer that the government could come in and get a
9 warrant to take after he fled and use that to provide the
10 research trail, which would show exactly how he got his
11 passport. That sort of defies logical sense.

12 THE COURT: Okay.

13 MS. AXEL: I am sure the Court is familiar with the
14 idea of a burner phone from a drug deal.

15 THE COURT: I am.

16 MS. AXEL: Well, you could imagine someone would get a
17 burner computer and they would go to a public spot where they
18 would have an ISP that couldn't be traced. So what this
19 restriction does is it doesn't keep anyone from doing these
20 farfetched scenarios that the government proffers concerning
21 speculatively buying a passport somewhere. What it does do,
22 though, is keep him from Zoom calls with counsel, internet
23 research with counsel, getting a job with an employer that
24 would require his communications to be confidential, doing a
25 workout that is available on YouTube, taking an online course

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1 of some kind and all of that legitimate stuff that all of us
2 do. It keeps him from that when it does not really secure
3 against these wild scenarios that the government posits.

4 Coming back to another point that I just need clean
5 up, your Honor, Judge Broderick's order doesn't allow him to
6 use the internet but the monitoring software for any purpose.
7 It only allows him to use the internet for communications with
8 counsel, and we have had an ongoing dialogue with Pretrial
9 Services exactly what that means. We have to revisit it
10 because there are a lot of things that go on in communication
11 with counsel that are not limited to just emails from their
12 email device.

13 So it is a much broader restriction than they make it
14 out to be. You he cannot have internet on his phone, which
15 means no smart device. He cannot order or post from his phone.
16 He can't have internet on his computer other than what is in
17 purposes -- I think for the sole purposes of communications
18 with counsel. So he cannot do what the government is saying
19 that he can do. It is prohibited by the way that the order is
20 drafted. All right. Here is my concern and you are welcome to
21 address it. Why isn't their clear and convincing evidence in
22 this case that the defendant represents a danger to the
23 community and persons other than himself? He assisted it
24 appears from the transcripts or endeavored to assist the DPRK
25 in learning how cryptocurrency works and providing them

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1 information.

2 For example, in addition to his attendance at the
3 conference, the government alleges that he proposed over an
4 encrypted application "If you find someone in North Korea, we'd
5 love to make an Ethereum trip to the DPRK and set up an
6 Ethereum node." And when questioned whether the plan made
7 economic sense Griffith responded, "It does actually. It will
8 help them circumvent the current sanctions on them." He made
9 repeated reference to the ability of the DPRK with the
10 knowledge of blockchain and cryptocurrency to evade both U.S.
11 and U.N. sanctions. That comes up multiple times during the
12 transcript. My concern is there is a lot you can read on the
13 internet about blockchain technology and about cryptocurrency.
14 I have done so myself in connection with other work.

15 MS. AXEL: Yes, your Honor.

16 THE COURT: The fact of the matter is there are
17 aspects of it that a person with Mr. Griffith's skills,
18 knowledge, experience and background could supply questions
19 that he could answer that would either elucidate risks of
20 detection to the North Koreans or means to avoid that risk of
21 detection. The problem with information once transmitted it
22 cannot be clawed back. Why doesn't that based on the probable
23 cause finding by the grand jury and the evidence proffered by
24 the government support a finding that releasing the computer
25 restriction also, in particularly if the home confinement or

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1 home detention is lifted, so that he can go elsewhere and use
2 the computer in an unmonitored setting, why doesn't that
3 present a danger of damaging advice being provided to the North
4 Koreans?

5 MS. AXEL: Well, your Honor, it is difficult to know
6 exactly where to start. First of all, I will point that it is
7 the government's burden to prove that he is a danger and they
8 have never argued that and that is for a reason, your Honor. I
9 would love to contextualize again some of the arguments that
10 they have made on the merits to point out this is really about
11 a trip to North Korea to attend the conference the remarks of
12 which at least -- we're not conceding that it is an accurate
13 transcript or that it is an inadmissible transcript, but the
14 government has submitted to the Court what it believes that the
15 defendant said there. I think to contextualize that, that is
16 the only direct contact with North Korea that the government
17 has alleged. I would submit it is the only one that they will
18 ever allege is that trip itself. Those remarks are at a high
19 level of generality.

20 Again, we have defenses to this case. I don't think
21 we want to tip our full hand to what those are, your Honor, but
22 those are not services. They have alleged services and those
23 are not services. In fact, I am familiar with the Court's --
24 the briefing before the Court in SEC v. Telegram because we do
25 that type of work and I know the education the Court has had

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1 there concerning blockchain. This kind of information was at
2 an extremely high level. It is not how to make a
3 cryptocurrency and not how to make a cryptocurrency exchange,
4 which the government said at one point. It is totally
5 nontechnical. It is the type of thing you discuss at a
6 conference. It is not the type of thing you do when you sit
7 down at your computer to draft code. None of that occurred and
8 none of that is alleged to have occurred.

9 The government has also strung together, setting aside
10 the conference, a few other events. Your Honor, again, we want
11 to satisfy the Court's concern that there is no danger
12 presented without divulging all the defense theories in this
13 case; but I think the events concerning a node were ones that
14 were actual communications involving the Ethereum Foundation
15 itself. Those ended because -- again, I don't want to divulge
16 the entire theory of the case, but that whole conversation is
17 completely separate from the conference itself. I think what
18 those communications do show is again there is not - he has no
19 alliance to anybody at the DPRK. None of those communications
20 shows that he does.

21 The final aspect that the Court referred to about
22 exchange of cryptocurrency, again, that also is not in any kind
23 of communication with the DPRK correctly. They are not
24 providing technical information to anybody. Again, there is an
25 end of that story that I think we need to save for the actual

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1 merits of the case itself, but I think that the evidence will
2 show that there is no back channel to the DPRK and I don't
3 think there is anyone alleged there. So, your Honor, there is
4 no evidence that defendant would or has directly contacted the
5 DPRK and would pose a danger in that respect. And the
6 information that was provided at the conference as the Court
7 can see is consistent with what is available on the internet.

8 So it is not a concern. Obviously Mr. Griffith has
9 already been punished for that conduct. He has been arrested
10 in the United States. He has transported across the country.
11 He has been told not to communicate with witnesses. The
12 government made another point here about how important it is
13 that he communicated with these witnesses but then they never
14 gave us a list of whose these people. So we as a defense have
15 done our own instructions, but they have no evidence that he
16 has done anything improper with the telephone he has that has
17 no smart access, but to contact those people. So the idea that
18 he would be so stupid to go off to try to provide some active
19 assistance now when he never did so before, I just think that
20 we're far afield from really a conversation about a danger
21 which he doesn't pose or a risk of flight, which he also
22 doesn't pose.

23 THE COURT: Thank you.

24 Since this is the government's burden of proof
25 certainly on release and release conditions, I will give Mr.

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1 Krouse the opportunity to respond.

2 MR. KROUSE: Thank you.

3 Just on this danger to the community point, defense
4 counsel is correct that the government didn't argue that before
5 Judge Moses or Judge Broderick relying instead on what we
6 believe was the stronger ground of risk of flight. We did
7 argue for detention. Of course now that the defense has sought
8 to reopen the bail argument before your Honor, it is our view
9 that your Honor can consider both grounds to continue that
10 condition or to make any other modification that the Court
11 deems appropriate.

12 So just on this point, your Honor, the government
13 argued for detention for the defendant. We believe that he
14 posed a risk of flight for all the reasons we laid out -- the
15 strength of the evidence, the prospects of punishment, the ties
16 to foreign jurisdictions, the unknown nature of the defendant's
17 financial resources. All of that in the government's view
18 posed a risk of flight.

19 On this point of internet access, the government
20 strenuously argued for a complete ban on any use of the
21 internet by the defendant. Judge Broderick decided to do a
22 more limited version of that to allow the defendant
23 opportunities to use the internet to communicate with his
24 counsel, but he did impose certain restrictions in light of the
25 defendant's sophisticated technological knowledge and that was

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1 appropriate. The defense's argument seems to be that
2 Mr. Griffith's lack of use of the internet is some
3 inconvenience to him, but that shouldn't move the Court. This
4 was a balance that Judge Broderick struck as a way of not
5 detaining him in prison. So the fact that he has certain
6 inconveniences that normal citizens don't have is not a ground
7 to lift a restriction that is appropriate in order to address
8 the specific risk of flight posed by the defendant and the
9 government believes in light of your Honor's questions the risk
10 danger that he could pose using his technological knowledge to
11 continue to advise North Korea about cryptocurrency and
12 blockchain technologies.

13 The defense's argument here seems to be there should
14 nobody restriction in place because if he was really going to
15 do that he would find some other way to do that like using a
16 burner lap top or burner phone. That doesn't seem to be a
17 strong argument. The government is limited in how it can
18 control the defendant's actions when he is on bail, which is
19 why the government argued for detention in the first place.
20 That is not a reason to lift all restrictions because they
21 would somehow be not fruitful. The government does want to
22 make it a little more difficult for the defendant to do things
23 that he might decide to do while on bail that are consistent
24 with the things that he was doing before he was released on
25 bail.

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1 So the defense argument that travel to North Korea and
2 providing this technical knowledge to one of the most dangerous
3 and human rights violating countries in the world is somehow
4 not significant conduct and doesn't illustrate a desire to
5 assist North Korea I think is inaccurate. The defense argument
6 that the government's evidence doesn't show anything beyond
7 just certain types of technical information provided by the
8 defense is also off base. The government doesn't have a full
9 transcribed recording of the entire conference. We don't know
10 exactly what Mr. Griffith said every second he was there and
11 every single person he spoke to. We don't know who he
12 connected with in North Korea, whose contact information he
13 might have obtained, who he might have spoken to later. We
14 don't have full visibility on that. We're limited by what
15 evidence we've been able to gather up to point, which is
16 significant. The recordings are just a snippet of the full
17 conference. We're not claiming that we have every single
18 communication made by the defendant during that conference.

19 We have not been able to gain access to the
20 defendant's lap top even with our search warrant. We don't
21 know if the defendant was utilizing the dark web to have
22 communications with people that he met in North Korea after he
23 left the conference or before he traveled to the conference.
24 There is a lot we don't know here. It's prudent in the
25 government's mind to take steps to try to prevent the defendant

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1 from further damaging national security by communicating
2 possibly with other people and one prudent step toward that end
3 is to monitor his internet access. There is nothing the
4 defense has said in the government's mind that justifies
5 limiting that monitoring condition on his bail in light of the
6 national security concerns posed and in light of the legitimate
7 risk of flight that the defendant poses.

8 THE COURT: Thank you, Mr. Krouse.

9 Thank you, Ms. Axel.

10 This is the Court's decision on the application of
11 Virgil Griffith to modify the present bail conditions and to
12 remove the condition of home confinement or detention and/or to
13 at least modify them to a curfew and eliminate the electronic
14 monitoring and GPS and also to modify the restriction of access
15 to internet capable devices that are monitored and then use
16 only for email communications with counsel.

17 It seems to me that Judge Broderick struck a fair
18 balance in this case. I will point out that the proof of risk
19 of flight, which I find by a preponderance of the evidence is
20 supported by the defendant's obvious access to sources outside
21 the United States. He is of great value to those who wish to
22 evade U.S. or U.N. sanctions with his knowledge and they would
23 be incentivized to help him flee. So I find that the
24 conditions that are presently existent satisfy that.

25 Further, this is my finding by clear and convincing

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1 evidence that the conditions are necessary because Mr. Griffith
2 presents a danger to the community and persons in that
3 community other than himself. The reason I make this finding
4 is having reviewed the partial transcript and which both sides
5 say are unsure of the actual accuracy, the comments reflected
6 therein are of a quote/unquote high level. In other words, it
7 would enable anyone to develop a blockchain in and of
8 themselves, but the point is that he was able to --

9 MS. AXEL: Hello. Did we lose the Court.

10 MR. KROUSE: I think we should wait to see if he calls
11 back.

12 THE COURT: I guess it is a mark of the length of our
13 proceeding that the battery on my phone ran out and I have
14 secured another phone. So that's where we are.

15 As I was pointing out, it is not merely the transcript
16 but the willingness to travel knowing of the likely exposure of
17 the risk he was willing to take is such that this man in my
18 view has the ability to respond to detailed questions with
19 technical information and knowledge that poses a grave danger.
20 That's my concern here and the modest restrictions that Judge
21 Broderick imposed appear to me to address that danger as well
22 as the risk of flight.

23 So the application to modify bail conditions is
24 denied.

25 Anything further from the government?

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1 MR. KROUSE: No, your Honor. Thank you.

2 THE COURT: Anything further from the defendant?

3 MS. AXEL: Well, I have one question if I may, your
4 Honor.

5 THE COURT: I don't about questions; but if you have
6 an application you want to make, I am happy to hear it.

7 MS. AXEL: Okay. Well, I think my application to the
8 Court would be I think there is confusion here about at least
9 the order itself and how it applies to the use of the internet.
10 Would the Court permit the defendant to use the internet on his
11 computer that is monitored but not just for communications with
12 counsel? As I said even just to assist the criminal defense,
13 he needs to be able to use the internet beyond the
14 communications with counsel. He needs to run internet searches
15 for example. So if that were on the monitored computer, which
16 apparently was what the government's thought that the order
17 was -- we have been reading it more conservatively -- would the
18 Court allow him to use a monitored computer for whatever
19 purpose on the internet?

20 THE COURT: I understood your application to apply
21 specifically to the limitation on use of the computer except
22 for communications with counsel. I know I read that and I
23 think you say right in your letter that the restriction of his
24 access to the internet be modified. "He is only permitted to
25 email with his counsel." So there is no confusion on this.

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1 That is what your application was and that is what I understood
2 it to be and that is what I ruled on.

3 MS. AXEL: Okay. Thank you, your Honor.

4 THE COURT: Anything else from the defendant?

5 MR. KLEIN: Your Honor, this is Mr. Klein.

6 THE COURT: Yes, sir.

7 MR. KLEIN: I had one point that I forgot to raise
8 yesterday when we were discussing the motion schedule that I
9 wanted to raise.

10 THE COURT: Yes, sir.

11 MR. KLEIN: Which is we wanted to ask your Honor to
12 inquire with the government if they plan to supersede between
13 now and the time of motion practice. If so, we would request
14 that they do so a month in advance of motion practice just for
15 the simple fact that we're not writing motions that get mooted
16 or somehow would radically change by a superseding indictment.

17 THE COURT: I understand your concern. If the
18 government supersede, I have no idea. That's their
19 prerogative. That is between the government and the grand
20 jury. You will have a basis to argue whatever you want to
21 argue in terms of an extension in the schedule or change in the
22 schedule.

23 MR. KLEIN: Thank you, your Honor.

24 THE COURT: Thank you all very much for the very fine
25 presentations.

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We're adjourned.

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